

ESTTA Tracking number: **ESTTA179584**

Filing date: **12/10/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179373
Party	Defendant Mark Gelfman
Correspondence Address	JAMEL OESER-SWEAT, ESQ. WOODS VERZANI LLP 292 MADISON AVE FL 22 NEW YORK, NY 10017-6311 UNITED STATES attorney@jamelsweat.com
Submission	Answer
Filer's Name	James F Woods
Filer's e-mail	jwoods@wvesq.com
Signature	/jfw/
Date	12/10/2007
Attachments	Answer to Notice of Opposition by Dmitri Kuklachev.pdf (7 pages)(142970 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

Dmitri Kuklachev,)	Opposition No.: 91179373
Opposer,)	
)	Serial No.: 77075635
v.)	
)	Mark: Moscow Cats Theatre
Mark Gelfman,)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Mark Gelfman (hereinafter “Applicant”) alleges, solely for the purpose of this proceeding, as an answer to the Opposer’s Notice of Opposition, the following:

1. In connection with the allegations contained in paragraph 1 of the Notice of Opposition, the Applicant does not have sufficient information at this time to admit or deny said allegations.
2. The Applicant does not have sufficient information to admit or deny the allegations in paragraph 2 of the Notice of Opposition.
3. The Applicant denies each and every allegation contained in paragraph 3 of the Notice of Opposition; except that the media coverage on the CBS News, New York Times, New York Post, Newsday, Timeout New York, and People Magazine, occurred under the Applicant’s use of the opposed mark and as a result of Applicant’s promotion thereof.
4. The Applicant denies each and every allegation contained in paragraph 4 of the Notice of Opposition.
5. The Applicant denies each and ever allegation in paragraph 5 of the Notice of Opposition.

7. The Applicant does not have sufficient information at this time to admit or deny said allegations contained in paragraph 7.

8. The Applicant denies each and every allegation contained in paragraph 8 of the Notice of Opposition.

9. The Applicant denies each and every allegation contained in paragraph 9 of the Notice of Opposition.

10. The Applicant does not have sufficient information at this time to admit or deny said allegations contained in paragraph 10.

11. The Applicant denies each and every allegation contained in paragraph 11 of the Notice of Opposition.

12. The Applicant denies each and every allegation contained in paragraph 12 of the Notice of Opposition.

13. The Applicant denies each and every allegation contained in paragraph 13 of the Notice of Opposition.

14. The Applicant denies each and every allegation contained in paragraph 14 of the Notice of Opposition.

15. The Applicant denies each and every allegation contained in paragraph 15 of the Notice of Opposition.

16. The Applicant denies each and every allegation contained in paragraph 16 of the Notice of Opposition.

17. The Applicant denies each and every allegation contained in paragraph 17 of the Notice of Opposition.

18. The Applicant denies each and every allegation contained in paragraph 18 of the Notice of Opposition.

19. The Applicant denies each and every allegation contained in paragraph 19 of the Notice of Opposition.

20. The Applicant denies each and every allegation contained in paragraph 20 of the Notice of Opposition.

21. The Applicant denies each and every allegation contained in paragraph 21 of the Notice of Opposition.

22. The Applicant denies each and every allegation contained in paragraph 22 of the Notice of Opposition.

23. The Applicant denies each and every allegation contained in paragraph 23 of the Notice of Opposition.

24. The Applicant denies each and every allegation contained in paragraph 24 of the Notice of Opposition.

25. The Applicant denies each and every allegation contained in paragraph 25 of the Notice of Opposition.

26. The Applicant denies each and every allegation contained in paragraph 26 of the Notice of Opposition.

27. The Applicant denies each and every allegation contained in paragraph 27 of the Notice of Opposition.

28. The Applicant denies each and every allegation contained in paragraph 28 of the Notice of Opposition.

29. The Applicant denies each and every allegation contained in paragraph 29 of the Notice of Opposition.

30. The Applicant denies each and every allegation contained in paragraph 30 of the Notice of Opposition.

31. The Applicant denies each and every allegation contained in paragraph 31 of the Notice of Opposition.

32. The Applicant denies each and every allegation contained in paragraph 32 of the Notice of Opposition.

33. The Applicant denies each and every allegation contained in paragraph 33 of the Notice of Opposition.

34. The Applicant denies each and every allegation contained in paragraph 34 of the Notice of Opposition.

35. The Applicant denies each and every allegation contained in paragraph 35 of the Notice of Opposition.

36. The Applicant denies each and every allegation contained in paragraph 36 of the Notice of Opposition.

37. The Applicant denies each and every allegation contained in paragraph 37 of the Notice of Opposition.

38. The Applicant denies each and every allegation contained in paragraph 38 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

39. Opposer has not shown a single use of the Applicant's mark that antedates the use of the mark by Applicant. Opposer's only used the name/mark "Kuklachev's Cat Theater" prior to the applicant's use of the mark at issue herein, as evidenced from newspaper articles provided by Opposer which show such use as late as 2001.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

40. Opposer was a work for hire for the Applicant in connection with the Applicant's use of the mark at issue and is not entitled to registration of the mark, which belongs to the Applicant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

41. Even if Opposer had used the mark at issue herein, which Applicant strongly asserts is not the case, the use was in intrastate commerce and isolated, rather than the prerequisite use in interstate commerce necessary to obtain a Federal Trademark.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

42. The Applicant asserts the affirmative defenses of Laches and Estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

43. The Applicant asserts the affirmative defense of abandonment. Even if Opposer had used the mark at issue herein in interstate commerce prior to the usage by the Applicant, which Applicant strongly asserts is not the case, the mark was not subsequently used for at least two years and the Opposer did not intend to resume usage thereof and it was thus abandoned.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

44. The Applicant asserts the affirmative defense of Prior Registration.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

45. The Applicant has used the mark with the Knowledge of the Opposer and in fact, has financially benefited from the use of the mark by the Applicant in interstate commerce.

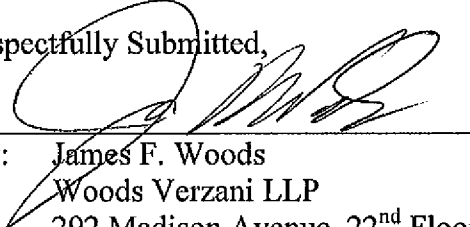
AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

46. The Opposer's Notice of Opposition and the claims stated therein, are based upon the claims of a third party, Yuri Kuklachev, previously filed under Opposition No. 91179281 and are therefore duplicative and should be dismissed.

WHEREFORE, the Applicant prays that the Opposer's Notice of Opposition in connection with the Application Serial No. 77075635 be denied and dismissed with prejudice; and that the registration of Applicant's mark shown and specified therein be accepted and that the Opposition be denied in favor of the Applicant.

Date: December 7, 2007

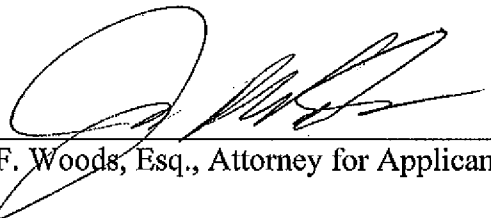
Respectfully Submitted,


By: James F. Woods
Woods Verzani LLP
292 Madison Avenue, 22nd Floor
New York, New York 10017
Tel.: 212-684-2500
Fax: 212-684-2512

Attorneys for Applicant

I hereby certify that a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** has been served on the Law Offices of Alexey Bakman, Esq., by mailing said copy on December 10, 2007, via Federal Express, overnight carrier, postage prepaid to:

Law Offices of Alexey Bakman, Esq.,
35 Seacoast Terrace #3J
Brooklyn, New York 11235
Attn: Alexey Bakman, Esq.



James F. Woods, Esq., Attorney for Applicant